

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN CAROLYN SQUIRES**, on March 14, 2005 at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. Carolyn Squires, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Vicki Cocchiarella (D)
Sen. Mike Cooney (D)
Sen. Jon Ellingson (D)
Sen. Jeff Essmann (R)
Sen. Steven Gallus (D)
Sen. Rick Laible (R)
Sen. Dave Lewis (R)
Sen. Jim Shockley (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Claudia Johnson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: Confirmation Hearings for Governor Schweitzer's appointments for Directors for the state of Montana Departments.
SR 10, 3/4/2005; SR 12, 3/4/2005;
Executive Action: None

Hal Harper, Chief Policy Advisor to Governor Schweitzer, presented the Governor's nominations for department directors, for the Committee's confirmation:

- Bill Slaughter, Department of Corrections;
- Richard Oppen, Department of Environmental Quality;
- Jeff Hagener, Department of Fish, Wildlife and Parks.

Mr. Harper also presented the names of two nominees appointed by former Governor Judy Martz, namely Mike Foster, Board of Regents, and Burl French, State Electrical Board.

SEN. JEFF ESSMANN, SD 28, BILLINGS, asked Mr. Harper what type of standards the Committee should apply in this confirmation process. **Mr. Harper** replied he did not want to give directives, and asked that the Senators use their best judgment. **SEN. ESSMANN** stated that the Governor had appointed individuals from both political parties, and asked whether the Committee should apply those same standards. **Mr. Harper** believed the State would be well-served if equal standards were applied. **SEN. ESSMANN** inquired whether the standards applied to future Schweitzer appointees, which would come before the Senate in two years, should be the same as those applied to current Martz appointees.

CHAIR CAROLYN SQUIRES, SD 48, MISSOULA, ruled the question was out of order as Mr. Harper had not been part of past decisions.

**CONFIRMATION HEARING FOR BILL SLAUGHTER, RICHARD OPPEN,
AND JEFF HGENER**

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

HEARING ON SR 10

Opening Statement by Sponsor:

SEN. CAROLYN SQUIRES (D), SD 48, opened the hearing on **SR 10**, Confirm Mike Foster as member of Board of Regents of Higher Education.

Proponents' Testimony:

Dr. Sheila Stearns, Commissioner of Higher Education, provided written testimony.

EXHIBIT(sts56a01)

Tom Ebzery, self, rose in support of Mike Foster's confirmation, stating he had supported Mr. Foster's nomination to the Department of Labor and Industry four years ago as well. He advised he had known Mr. Foster for many years, and found him to be a person of integrity and fair-mindedness, adding he was a valuable asset to the Board of Regents.

Stuart Doggett, Flathead, Dawson, and Miles City Community Colleges, rose in support of Mr. Foster's confirmation, adding that the three colleges' presidents asked him to convey their support as well. They had great respect for Mr. Foster's work on the Board and felt his past legislative experience was beneficial in his position as Regent.

Opponents' Testimony: None

Informational Testimony: None

{Tape: 1; Side: A; Approx. Time Counter: 14.3}

Questions from Committee Members and Responses:

CHAIR SQUIRES recalled Mr. Foster's 1991 "no" vote on HB 5, a budgetary bill dealing with construction, maintenance, and expansion of the University of Montana, and asked why he had voted against it. **Mr. Foster** did not recall the circumstances surrounding his vote, adding that he had always voted with his constituents' best interests in mind.

CHAIR SQUIRES recounted a bill which sought to place a Native American on the Board of Regents, and asked Mr. Foster why he had voted against that bill as well. **Mr. Foster** replied that he strongly supported current legislation, namely HB 540, which dealt with a similar issue, adding that he was convinced that HB 540 was necessary for the health and welfare of the Board. As to the Chair's question, he did not remember the reasons for his vote, but submitted he had testified in support of a 1997 bill by former **SEN. ARNIE MOHL**, to add a Native American to the Montana Transportation Commission; this bill became law.

SEN. SQUIRES inquired whether he would support the concept of adding a Native American to the Board. **Mr. Foster** advised it was

vital to have the Native American perspective in the university system's decision-making process; he was not sure whether it was appropriate to legislate this, however, but would support a Native American serving on the Board because education was the means for success on the reservations.

{Tape: 1; Side: A; Approx. Time Counter: 21.5}

SEN. MIKE COONEY, SD 40, HELENA, recalled a 1993 bill for a constitutional amendment, which sought to transfer the Board of Regent's authority over the university system to the Legislature; according to his research, Mr. Foster had voted "yes" on the bill which, ultimately, failed. **SEN. COONEY** asked about the reasons for his vote, and how he would feel should such a proposal be made today. **Mr. Foster** replied he did not remember specifics about the bill; he referred to his previous testimony with regard to changing perspectives, adding whatever vote he made at that time would have been based on the available information and the will of his constituents; he asserted that he stood by his voting record.

SEN. COONEY referred to the second part of his question, and inquired what Mr. Foster's position would be today. **Mr. Foster** replied, from his current perspective, he would not recommend that change.

SEN. COONEY stated, during Mr. Foster's tenure at the Legislature, there had been a bill which would have done away with the public member on the Board of Regents, replacing him or her with the president of the university system. **SEN. COONEY** recalled that Mr. Foster had supported this concept at the time, and asked whether he would support it now. **Mr. Foster** replied he would not.

SEN. COONEY advised he did not expect specific answers, but was curious whether he had changed his position from that of record.

{Tape: 1; Side: A; Approx. Time Counter: 26.6}

SEN. JON ELLINGSON, SD 49, MISSOULA, asked that Mr. Foster state three top priorities as to the direction and focus of the university system for the next decade. **Mr. Foster** advised one priority was workforce development, and two-year colleges were a high priority as they were directly tied to workforce development; he added that Montana's utilization of those facilities was not optimal, and should be promoted.

{Tape: 1; Side: B}

Mr. Foster held that two-year training programs would go a long way in keeping people in Montana, and aid the State's economy. He added that the Board was focusing on economic development, and, to that end, had reached out to the Legislature and the Executive Branch to achieve this goal through shared leadership. Another focus was the issue of transferability, as the current system was confusing and slow.

Closing by Sponsor:

CHAIR SQUIRES closed.

{Tape: 1; Side: B; Approx. Time Counter: 2.6}

HEARING ON SR 12

Opening Statement by Sponsor:

SEN. CAROLYN SQUIRES (D), SD 48, opened the hearing on **SR 12**, Confirm Burl French as a member of the State Electrical Board.

Proponents' Testimony:

Roy Morris, Petroleum Wholesaler, submitted written testimony and a letter from Mr. French's employees.

[EXHIBIT](#)(sts56a02)

[EXHIBIT](#)(sts56a03)

Bill Bentley, Montana Chapter, National Electrical Contractors' Association (NECA), rose in support of Mr. French's confirmation, adding his association was very satisfied with Mr. French's performance on the Board.

Rick Hutchinson, Montana State Business Electrician, stood in support of Mr. French's confirmation, adding that, as a member of the electrical community, Mr. French has treated the issues fairly.

Max Griffin, President, Action Electric, stated Mr. French had been fair, honest, and committed to the task during his time of service on the Board. Due to his knowledge of the industry, Mr. French was a great asset to the Board. **Mr. Griffin** felt it took a dedicated individual to serve, without compensation, on the Board, and Mr. French was such a person. In closing, he asked to submit the signatures of proponents in Billings who could not attend.

EXHIBIT(sts56a04)**Margaret Morgan, Treasure State Independent Electrical**

Contractors, stressed that Mr. French was not a member of this organization, but had demonstrated to be very conscientious and one who listened to both sides of an issue. She advised that he had not always agreed with the Contractors' point of view, nor that of organized labor; she felt this was the reason his appointment was being challenged. She advised that Mr. French had years of experience to offer the Board, and there was nothing in his file to challenge this respected businessman's appointment.

{Tape: 1; Side: B; Approx. Time Counter: 13.8}

Opponents' Testimony:**Keith Allen, International Brotherhood of Electrical Workers**

(IBEW), advised of several incorrect statements made at the February 9, 2005, hearing: instead of attending 16 hours every four years, with eight being on Code and eight being comprehensive, continuing education required 24 hours every three years, with a minimum of 12 hours on Code, and the remaining on industry-related training. Also, the National Electrical Code changed every three years, that was the reason for the three-year licensing cycle for Montana's electricians. He recalled Mr. French's statement that public safety was the Board's priority, and that he based his decisions on what was ethically right. **Mr. Allen** asserted that ethics had nothing to do with the safety of electrical installations, although Montana Law and Licensure do; licensure ensured a level of accountability regarding the minimum standards of electrical installation. **Mr. Allen** stated that by supporting unlicensed installations, Mr. French had shown utter disregard for the industry's rules as well as public safety.

He advised that opposition Mr. French's appointment was not political in nature, or instigated by organized labor, but was based on his past, as he had worked as an unlicensed electrician in 1982, and on his actions which did not protect lives and property in Montana. In closing, **Mr. Allen** submitted, and read from, copies of a letter by the Montana State Conference on Electrical Workers and supporting documents. He added that even though the letter of censure was not in his file, a copy of the minutes pertaining to that decision were, and they indicated the existence of such a letter. In closing, he also provided a list of people opposing Mr. French's nomination.

EXHIBIT(sts56a05)**EXHIBIT**(sts56a06)

Informational Testimony: None

{Tape: 1; Side: B; Approx. Time Counter: 19.5}

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA, SD 47, MISSOULA, asked Mr. Bentley about the decision-making process which lead to NECA's support of the confirmation. **Mr. Bentley** advised the decision had been made by the Board of the Montana Chapter.

SEN. COCCHIARELLA wondered how many members served on this Board, and asked about the vote count. **Mr. Bentley** advised there were 12 members, and the vote had been unanimous.

SEN. COCCHIARELLA requested information on the Board members, which **Mr. Bentley** agreed to provide.

{Tape: 1; Side: B; Approx. Time Counter: 21.1}

SEN. COCCHIARELLA asked Mr. Hutchinson to explain his role in the electrical community. **Mr. Hutchinson** advised that he managed his father's electrical contracting business, was a Master Electrician, and employed two other Masters. He was a member of a steering committee within the Board of Montana Colleges' Apprenticeship Training Program, the Board of Directors of the Independent Electrical Contractors' Association, and the State Electrical Board.

SEN COCCHIARELLA asked Mr. Hutchinson to describe the make-up of the Board. **Mr. Hutchinson** stated there were two electrical contractors, two public members at large, and he, himself.

SEN. COCCHIARELLA ascertained that Mr. Hutchinson managed his father's business, and did not consider himself a contractor. **Mr. Hutchinson** confirmed he was an employee, and not the Responsible Master Electrician; he pointed out that, according to law, in order to have an unlimited contracting shop, each facility was required to have a Master Electrician who signed up with the State and declared himself the Responsible Master. He added he could take over at some point as he had his Master's license already.

SEN. COCCHIARELLA asked what type of jobs were being held by the Board's public members. **Mr. Hutchinson** thought one was in construction, and was not sure about the other.

{Tape: 1; Side: B; Approx. Time Counter: 23.5}

SEN. RICK LAIBLE, SD 44, VICTOR, asked Mr. French whether he had seen a copy of the letter provided by Keith Allen. **Mr. French** stated he had not seen it.

SEN. LAIBLE provided him with a copy, and stated that there had been allegations that certain sanctions by the Board were not in Mr. French's file.

{Tape: 2; Side: A}

SEN. LAIBLE asked about the letter dated November 11, 1982. **Mr. French** replied he was not aware of this letter, and did not recall it being in his file, as he had stated during the first hearing.

SEN. LAIBLE asked him to comment on the 1992 minutes concerning his company. **Mr. French** did not recall the details; all he remembered was one occasion where there had been a question of whether a certain type of wiring had to be done by a licensed electrician. He did not remember whether that was in 1982 or 1992, but stated if a licensed electrician employed an unlicensed one, a letter of reprimand would be placed in his file.

SEN. LAIBLE ascertained that Mr. French had never received the letter from 1982, which **Mr. French** confirmed.

SEN. LAIBLE wondered why the minutes of the 1992 meeting did not result in another warning letter. He asked permission to address a representative of the State.

Jill Caldwell, Bureau Chief, Board of Licensing, advised that the letter from 1982 was in the file, but the one from 1992 was not. She did not know whether it had not been written, or whether it had become lost.

SEN. LAIBLE ascertained that the letter from 1982 did come from the file, which **Ms. Caldwell** confirmed.

{Tape: 2; Side: A; Approx. Time Counter: 4.6}

CHAIR SQUIRES surmised that Board minutes were taken much the same way as in the Senate, and stated, if the letter of censure was mentioned on tape, it was a strong indication that the members wanted it to be issued. **Ms. Caldwell** agreed.

CHAIR SQUIRES stated, while they may not have followed through, there had been discussion of censorship.

{Tape: 2; Side: A; Approx. Time Counter: 6.2}

SEN. JIM SHOCKLEY, SD 45, VICTOR, remarked that Mr. French might not have known he was going to get this letter as the decision may have been made after he left the meeting, and asked Ms. Caldwell whether this might have been the case. **Ms. Caldwell** stated it could have.

Mr. French addressed **SEN. LAIBLE**, stating that the 1982 letter was in regards to his electrical contractor's license, and he had not been aware such a license was required.

{Tape: 2; Side: A; Approx. Time Counter: 7.7}

SEN. STEVE GALLUS, SD 37, BUTTE, asked whether Mr. French remembered the 1992 discussion with the Board, which **Mr. French** did not. **SEN. GALLUS** then inquired about the outcome of the 1982 letter. **Mr. French** advised the 1982 letter was the one reminding him about not having an electrical contractor's license, which he subsequently obtained.

SEN. GALLUS inquired whether Mr. French was disputing that the 1992 charges had ever happened, when the minutes clearly stated that he appeared before the Board to discuss the compliance order issued to him by Bob Frey. He asked whether he ever hired an unlicensed worker. **Mr. French** replied that he had not. **SEN. GALLUS** surmised, regardless of the letters, that Mr. French maintained none of this ever took place. **Mr. French** advised he only said that he did not recall meeting with the Board, or having an issue with Mr. Miller performing unlicensed work.

{Tape: 2; Side: A; Approx. Time Counter: 10.2}

SEN. COONEY asked Mr. French when Governor Martz first appointed him to the Board. **Mr. French** replied it was almost two years ago. **SEN. COONEY** inquired as to the length of the term. **Mr. French** believed it was a five-year term.

SEN. JOE BALLYEAT, SD 34, BOZEMAN, referred to the 1982 letter, and asked whether Mr. French had complied with the request. **Mr. French** replied that he had. **SEN. BALLYEAT** ascertained that there had not been any dispute; he simply had not been aware of the requirement. **SEN. BALLYEAT** believed that Mr. French had no recollection of the events, and asked whether he would examine old records in order to refresh his memory. **Mr. French** stated he

had gone through his file, talked with his employees, and asked questions of the Board of License, in an effort to find out whether this censure letter was not sent because the issue addressed in the minutes had been resolved; he was told this was possible.

SEN. BALLYEAT asked Mr. Allen whether there was a statute of limitation, seeing that some of this happened 23 years ago. **Mr. Allen** advised that the Board had been in existence since 1891, and he had requested and paid for this set of minutes two years ago.

SEN. BALLYEAT asked again whether there was a time limit. **Mr. Allen** replied there was not. **SEN. BALLYEAT** wondered whether he had any explanation as to the discrepancy with regard to the censure. **Mr. Allen** stated he did not.

SEN. BALLYEAT referred to the e-mail pertaining to the public comment issue in Mr. Allen's handout, and disputed the charges as Mr. French had merely said it was not the time for public comment. He surmised that Mr. French was not against public comment, but was under the impression it would come at a different time. **SEN. BALLYEAT** felt Mr. Allen's comment about this being contemptible was pretty strong, and wondered if he had any more to add to the allegations. **Mr. Allen** advised the e-mail referred to an Administrative Rules Committee meeting, which had always been open to public comment.

SEN. BALLYEAT advised that the first hearing on Mr. French's confirmation was not open for public comment, whereas this meeting was; he wondered whether Mr. French may have been under the impression that this particular meeting was also not the time for public comment, that there would be time for it later. **Mr. Allen** advised meetings by entities such as the Licensing Board were governed by different rules than the Legislature's.

SEN. BALLYEAT asked Mr. French why he said "this is not the time in the process for public comment". **Mr. French** stated, as Committee Chair, he had contacted the Board's legal staff who advised these meetings had no public comment; subsequently, he sent those e-mails, and then was contacted by the legal staff, advising there *should* be public comment; this was the reason for the added language.

SEN. BALLYEAT asked whether it was possible that legal counsel meant "closed but with public comment," and he understood this to mean "closed, without public comment." He was trying to figure out why they changed their minds. **Mr. French** replied there had not been any explanation as to the contradiction.

{Tape: 2; Side: A; Approx. Time Counter: 23.2}

CHAIR SQUIRES wondered why counsel would advise to close the meeting and then reverse itself. **Ms. Caldwell** believed counsel did not tell the Board to close the meeting, but advised "no public comment". She contended that the intent was for the Committee to do their work, in an open meeting, and allow public comment during the actual ruling.

CHAIR SQUIRES asked why they reversed their decisions. **Ms. Caldwell** stated that Keith Allen had visited with the staff, who then explained to legal counsel what had transpired, after which they decided to allow a public comment portion at the meeting.

{Tape: 2; Side: A; Approx. Time Counter: 26.2}

SEN. DAVE LEWIS, SD 42, HELENA, advised the term "censure" was strong, and asked how often people were "censured." **Ms. Caldwell** stated that the word "censure" had been replaced by "reprimand."

SEN. LEWIS asked whether she was aware of any other person who had been censured or reprimanded, and was subsequently appointed to the governing board of their profession. **Ms. Caldwell** replied that she was not. **SEN. LEWIS** commented that in his years of working for four different Governors, he had never seen it, either, and that was why it was a big issue to him.

Ms. Caldwell added that when the Governor's Office called and asked about licensing complaints or disciplinary action, her office had only supplied documents of public record; she believed this letter had not been disclosed to the public since it was just a letter.

SEN. LEWIS wondered whether she would have told the Governor's Office of the mention of a letter.

{Tape: 2; Side: B}

Ms. Caldwell replied she would not have.

SEN. GALLUS requested the members who were present at the 1992 meeting be contacted so that this mystery could be solved; he also asked for information on Mr. Miller's date of employment with Northwest Fuel Systems, Inc.

CHAIR SQUIRES asked Ms. Caldwell to obtain this information by March 17, when the Committee would take action on the resolution.

{Tape: 2; Side: B; Approx. Time Counter: 5.4}

SEN. LAIBLE asked **George Edwards** from the audience, who identified himself as **Program Manager, State Electrical Board**, whether his position dated back to 1982. **Mr. Edwards** advised he had been on the Board since 2002. **SEN. LAIBLE** asked for his opinion on what might have taken place with regard to the letters in Mr. French's file. **Mr. Edwards** explained that many files were lacking documents; the office had moved to different locations over the years, and that might account for the discrepancy.

SEN. LAIBLE asked whether it was unusual to get these kinds of reprimands. **Mr. Edwards** advised that the complaint process had changed over the years, and actions depended on the severity of the complaint; a letter may have been inappropriate in this case. He stated there was a lot of controversy over the low-voltage issue, which ultimately ended up in a ruling. **Mr. Edwards** added this may have been a licensure issue at first, as installation of less than 90 volts did not require a license.

SEN. LAIBLE asked if this would be the explanation of why Mr. Miller was not a licensed electrician. **Mr. Edwards** conceded this was possible. **SEN. LAIBLE** asked, since there was no follow-up on either one of the two issues covered in the 1982 and 1992 letters, whether it would be safe to assume that they had been remedied and did not warrant further action. **Mr. Edwards** said this was his opinion.

SEN. COCCHIARELLA asked Mr. French to describe the Board's make-up from his perspective. **Mr. French** advised there were two electrical contractors; the public member, Mr. Martell, was a building contractor; Linda Holden, a former legislator; and Rick Hutchinson, a licensed electrician.

SEN. COCCHIARELLA asked whether he thought the representation on the Board reflected the people who work in the industry. **Mr. French** stated that it did.

SEN. COCCHIARELLA wondered who should represent the industry on the Board if this was a perfect world. **Mr. French** replied it should be Jesus Christ himself. He opined the industry was well-represented on the Board in its current make-up.

Closing by Sponsor:

SEN. SQUIRES stated Mr. French's term was for five years.

ADJOURNMENT

Adjournment: 4:45 P.M.

SEN. CAROLYN SQUIRES, Chairman

CLAUDIA JOHNSON, Secretary

MARION MOOD, Transcriber

CS/cj/mm

Additional Exhibits:

EXHIBIT ([sts56aad0.PDF](#))